

1 that Mr. Brady gave you, you were going to, the Klemmers
2 were going to pick up \$11,500 of that, weren't they?

3 THE WITNESS: Right.

4 JUDGE MILLER: And all that Mr. Murray would
5 have to produce is \$19,500, right?

6 THE WITNESS: Right, but the limited partner-
7 ship is structured such that that was the initial capital
8 contribution, but it could be amended at any time to
9 increase the amount, upon agreement of the partners, so if
10 I wanted him to contribute more we could agree to do so.

11 JUDGE MILLER: Now, let me see if I understand
12 that. If you wanted, the paragraph 5 of the partnership
13 agreement provides for the \$30,000, right?

14 THE WITNESS: Right.

15 JUDGE MILLER: And then it says, "Upon agree-
16 ment of the general and limited partners, the capital con-
17 tributions may be increased over and above the total con-
18 tributions set forth in paragraph 5 above."

19 THE WITNESS: Right.

20 JUDGE MILLER: Now, if you go to Mr. Murray,
21 who holds 65 percent of the general partnership, and you
22 say, hey, we've got to come up with another \$30,000, and
23 he says no. That's the end of it, isn't it?

24 THE WITNESS: Well, that's not --

25 JUDGE MILLER: Because you can't force him,

1 under that paragraph 6, can you?

2 THE WITNESS: No, but it's highly unlikely
3 that he's willing to throw away his investment up till that
4 point. There is no reason to presume that he wouldn't be
5 willing to --

6 JUDGE MILLER: All I am saying is he's got
7 control, doesn't he?

8 THE WITNESS: Control to what?

9 JUDGE MILLER: To any additional funds.

10 THE WITNESS: Oh, no, because I can add a
11 different limited partner if I chose to, if he's not
12 interested in going forward, then I could add another limited
13 parnter. So I wouldn't be stuck with him if he were not
14 interested at all.

15 JUDGE MILLER: All right. Go ahead,
16 Mr. Yelverton.

17 BY MR. YELVERTON:

18 Q Let turn to this limited --

19 JUDGE MILLER: Do you know -- Let me read you
20 paragraph 12, incidentally, at page 5 of the limited part-
21 nership. "The general partner may not substitute a partner
22 in her place or sell or assign all or any part of interest
23 in the partnership business without the written consent
24 of the limited partner. Additional limited partners may be
25 admitted to the partnership only upon consent of the general--

1 on terms that may be agreed in writing between the general
2 and such additional limited partners. The terms so
3 stipulated shall constitute an amendment to this partner-
4 ship agreement." Are you saying to me he has no vote on
5 that?

6 THE WITNESS: No vote on adding additional
7 partners?

8 JUDGE MILLER: That's right, he has nothing
9 to say about that, you are the only one?

10 THE WITNESS: Well, it says that additional
11 limited partners may be admitted upon the consent of the
12 general partner, between the general partner and such
13 additional limited partners, not the current limited
14 partner.

15 JUDGE MILLER: So if you were to do that, you
16 would dilute any profits that he would get under paragraph 9?

17 THE WITNESS: Right.

18 JUDGE MILLER: He would automatically have
19 less than 65 percent?

20 THE WITNESS: Uh-huh.

21 JUDGE MILLER: Proceed, Mr. Yelverton.

22 BY MR. YELVERTON:

23 Q Ms. Klemmer, let us go back to the drafting
24 and formulation of this limited partnership agreement and
25 I don't want to ask too many questions that have been already

1 Q Turning to section 2, page 2, it has legal
2 qualifications in it. It states that David T. Murray is a
3 limited --

4 MR. BRADY: Can I look on? Do you have --

5 MR. YELVERTON: Certainly, no problem.

6 MR. BRADY: If you don't mind, I'll also
7 guide it to her to it to expedite things.

8 MR. YELVERTON: Oh, certainly, section 2,
9 page 2, legal qualifications. It has three columns, and
10 Valerie J. Klemmer, David T. Murray.

11 THE WITNESS: Right.

12 MR. BRADY: Right.

13 BY MR. YELVERTON:

14 Q It has Mr. Murray's post office box number.
15 What was the source of the information for Mr. Murray's
16 post office box and address and zip code?

17 A I suppose he would have provided that to
18 Mr. Murray -- Mr. Brady if Mr. Brady didn't already have it.

19 Q Mr. Murray did not provide it to you?

20 A No.

21 Q And you didn't provide it to Mr. Brady?

22 A No, I wouldn't have known it.

23 Q The next page, section 2, page 3, legal
24 qualifications. Question 5A and B. It's checked yes, that
25 a party to the application has or had a broadcast application

1 pending before the Commission and one which had been dis-
2 missed with prejudice by the Commission. It refers to an
3 Exhibit 1, which in turn states that Mr. Murray was a limited
4 partner in Karns Broadcasting, Ltd., Karnes, K-A-R-N-S,
5 a new FM in Karns, Tennessee, and was also a limited parnter
6 in Corydon, C-O-R-Y-D-O-N, Broadcasters, Ltd. an applicant
7 for a new FM broadcast station at Corydon, Indiana, and also
8 Mr. Murray apparently individually filed for a new FM
9 station at the University of Mississippi. What was the
10 source of that information?

11 A. I suppose he provided that to Mr. Brady?

12 Q. Mr. Brady -- excuse me, Mr. Murray didn't
13 provide that to you?

14 A. No.

15 Q. And you didn't provide that to Mr. Brady?

16 A. I don't believe.

17 JUDGE MILLER: Mr. Yelverton, would you do me
18 the courtesy of reading the, if it's there, the BPH number
19 or whatever it is.

20 MR. YELVERTON: Yes, Your Honor.

21 JUDGE MILLER: For the Mississippi station
22 that he filed in his own right.

23 MR. YELVERTON: This particular exhibit has
24 no file number. I believe an amendment was filed by Liberty
25 sometime later in the proceeding which updated the

1 information on the Univeristy of Mississippi application.
2 Perhaps Mr. Brady could provide which amendment that was
3 and file number.

4 MR. BRADY: I'll attempt to do that. Your
5 Honor, according to an amendment, this was not executed
6 when I spoke -- Ah, my notations indicate we filed this in
7 this proceeding on February 13, '89, and the reporting in
8 that particular amendment noted the fact that the applica-
9 tion's, the file number we reported was BPH-851127.

10 JUDGE MILLER: 8-5-1-1 --

11 MR. BRADY: 2-7.

12 JUDGE MILLER: 2-7.

13 MR. BRADY: M-F.

14 JUDGE MILLER: M-F.

15 MR. BRADY: And for your information, Your
16 Honor, this also reports that that application was returned
17 as unacceptable for tender and that an application for
18 review is pending.

19 JUDGE MILLER: All right. Thank you.

20 MR. YELVERTON: Your Honor, do you need the
21 file numbers for the Corydon, Indiana application?

22 JUDGE MILLER: No, I just wanted to try to
23 get a fix on Mr. Murray, how he was moving, where he was
24 moving, what he was doing, and I was interested in what he
25 was doing in his own right and Mr. Brady was able to provide

1 that information for me.

2 BY MR. YELVERTON:

3 Q Ms. Klemmer, when was the first time you
4 became aware that Mr. Murray had filed an FM application
5 for the University of Mississippi?

6 A I don't know. I don't remember that he told
7 me or I just seemed to have read it. He could have told me
8 and I forgot. I just didn't pay any attention.

9 Q Mr. Murray never directly told you that, to
10 your recollection?

11 A Not that I remember.

12 Q And Mr. Murray never told you that he was an
13 applicant for an FM in Karns, Tennessee?

14 A Not that I remember.

15 Q And Mr. Murray never told you personally that
16 he was an applicant for a new FM, or at least a limited
17 partner, I stand corrected, for a new FM in Corydon,
18 Indiana?

19 A He may have, I just don't remember.

20 Q I would like to turn your attention to
21 section 2, page 4, Liberty application, legal qualifications,
22 citizenship and other statutory requirements. Question
23 No. 9 asks in a very convoluted, legalese way whether the
24 applicant is an alien. How did you know whether Mr. Murray
25 was a U.S. citizen or not?

1 A. Just his East Tennessee accent, I suppose.

2 Q. But you never asked him whether he was a U.S.
3 citizen?

4 A. No, I can't say that I --

5 Q. He never told you he was a U.S. citizen?

6 A. No.

7 Q. And Question 10 talks about adverse actions
8 taken by another court in civil criminal proceedings. How
9 did you know whether Mr. Murray was not a convicted felon?

10 A. I di dn't. Mr. Brady would have handled that,
11 I suppose.

12 Q. You didn't ask Mr. Murray whether he was ever
13 convicted of any felonies?

14 A. No. No. Again, this CPA of ours, the one
15 who recommended him, we held in high esteem. The man is
16 very, very conservative and if he recommended the fellow
17 then we felt completely confident with that.

18 Q. And you didn't ask Mr. Murray whether he had
19 been involved in any civil proceedings?

20 A. No.

21 Q. Involving discrimination, did you?

22 A. No.

23 Q. You never asked him whether he had been
24 involved in civil proceedings that that had allegations or
25 adjudications of fraud or anything of that nature, did you?

1 A. Those would be things an attorney would ask
2 him, I would presume, not a lay person.

3 Q. But you didn't ask Mr. Murray?

4 A. No.

5 Q. Did you ask Mr. Brady to ask Mr. Murray?

6 A. I don't recall that I asked him. I guess he
7 knew to do so, or he, as it turns out, he already had worked
8 with him, so he would know all those answers.

9 Q. Mr. Brady told you he had worked with Mr. --

10 A. No, he didn't tell me, but I said, as it turns
11 out, he did. So obviously, he either asked him, he knew
12 that beforehand.

13 JUDGE MILLER: Let me see if I can shortcut
14 some of this stuff, Mr. Yelverston.

15 You had never met Mr. Murray face to face up
16 until just recently?

17 THE WITNESS: This morning.

18 JUDGE MILLER: This morning.

19 THE WITNESS: That's correct.

20 JUDGE MILLER: Now, you have talked to him
21 on the phone initially.

22 THE WITNESS: That's correct.

23 JUDGE MILLER: When you were --

24 THE WITNESS: Deciding.

25 JUDGE MILLER: Negotiating.

1 have to satis- -- put the little "X" on the certificate,
2 wasn't it?

3 THE WITNESS: Right. But my husband looked
4 on with me to make sure.

5 JUDGE MILLER: All right, now, one more thing
6 before we go back to Mr. Yelverton. I asked you some
7 questions and we talked about paragraph 12 of that partner-
8 ship agreement, in which I think the substance of your testi-
9 mony is I can bring on an additional partner without the
10 consent of Mr. Murray. Wasn't that in essence what you said?

11 THE WITNESS: I bleieve that's what the
12 pargraph said.

13 JUDGE MILLER: Yeah. And the last sentence
14 of that paragraph 12 says, "The terms so stipulate shall
15 constitute an amendment to this partnership agreement."
16 Now, have you ever discussed paragraph 15 of that agreement
17 with either Mr. Murray or Mr. Brady or your husband?

18 THE WITNESS: Let me see what it says.

19 JUDGE MILLER: "This agreement, except with
20 respect to vested rights of the partners, may be amended
21 at any time by the agreement of all general and limited
22 partners." Doesn't that mean that he would have to pass on
23 any amendment that you wanted to place in this partnership
24 agreement?

25 THE WITNESS: I'm sorry, doesnt't that mean

1 that?

2 JUDGE MILLER: He, Mr. Murray, would have to
3 agree to any amendment to the partnership agreement?

4 THE WITNESS: I don't know.

5 JUDGE MILLER: Proceed, Mr. Yelverton.

6 MR. YELVERTON: Thank you, Your Honor.

7 BY MR. YELVERTON:

8 Q Ms. Klemmer, I was asking you about section 3,
9 financial qualifications. If you would look at that page
10 and also section 7, page 2, certification, whereby you
11 signed the application. It has a date, August 28, 1987.
12 Do you have those two pages?

13 A Okay, I have the one that I signed. I don't --
14 What was the other one you said?

15 Q The other one is section 3, financial quali-
16 fications, it just has some printed matter at the top.

17 JUDGE MILLER: Back up this direction, ma'am.
18 Yeah, that's it.

19 THE WITNESS: Oh, okay. We already looked at
20 that I thought.

21 BY MR. YELVERTON:

22 Q Okay, well, I want to ask you some more
23 questions about it. I believe you testified earlier this
24 morning, that on August 28, 1987, you were in Asheville?

25 A Uh-huh.

1 A Which was standing there on her property.

2 Q And you were aware that that was a leased
3 tower site?

4 A Yes. Yes.

5 JUDGE MILLER: In fact, you not only knew it
6 was a leased tower site, you knew --

7 THE WITNESS: How much she was getting.

8 JUDGE MILLER: How much she was being paid
9 for it, didn't you?

10 THE WITNESS: That's right.

11 BY MR. BRADY:

12 Q With respect to previous testimony, it is my
13 recollection that you gave certain testimony about at least
14 some aspects of your discussion with Ms. Utter involved
15 an agreement to agree to something in the future. What
16 was it that you were going to agree to in the future?

17 A Well -- Go ahead. Are you are finished?

18 Q If anything? I guess is my question.

19 A Well, we had already discussed the terms of
20 the lease, insfar as the annual fee that she would charge.
21 The only thing that would have needed to be worked out
22 would have been the length of the lease.

23 Q In your mind, at the time you left her
24 property, had you reached an agreement with her as to the
25 price that was going to be paid for a year?

1 A. Yes.

2 Q. Had you reached an agreement with her as to
3 the location of the tower?

4 A. Yes.

5 Q. But you say you had not reached a specific
6 agreement with respect to the number of years?

7 A. Right. We didn't discuss it.

8 MR. BRADY: That's all, Your Honor.

9 JUDGE MILLER: Okay. Recross. Ms. Lawless?

10 MS. LAWLESS: Yes, Your Honor.

11 RECROSS-EXAMINATION

12 BY MS. LAWLESS:

13 Q. Ms. Klemmer, you just testified that you
14 decided on an exact location for the tower on Ms. Utter's
15 property before you left that first meeting?

16 A. He said did you decide on a location. I
17 said yes, I didn't say an exact location, I said "a"
18 location.

19 Q. Can you tell me what you mean then by "a"
20 location?

21 A. Just the possibilities that were acceptable
22 to her, just the area of her property that was acceptable
23 to her.

24 Q. And how big an area would that have -- In
25 terms of the total size of her property?

1 A. Well, it's all close together, between the
2 dog pound and the other tower, it's -- I'm not good with
3 feet, but I don't know, maybe 100 feet. Oh, and this one
4 end of her property.

5 Q. In about a 100 square foot area?

6 A. I don't know if it would be that, it might be.

7 JUDGE MILLER: When you were talking, did you
8 come to any meeting of the minds as to how many acres you
9 were going to need?

10 THE WITNESS: Oh, we didn't have to discuss
11 acres, she only owns 1.3 acres total up there. It was just
12 what spots, I mean it was just, not that -- She knew what
13 a tower, how much space a tower used. She had one sitting
14 on her property already.

15 JUDGE MILLER: Go ahead, Ms. Lawless.

16 BY MS. LAWLESS:

17 Q. Did you know how much space the tower would
18 require?

19 A. I didn't but my neighbor did.

20 Q. Did you assume that your tower would be
21 similar to or the same as the TV tower that was on her
22 property?

23 A. No, I did make any assumptions, such
24 assumptions.

25 Q. Did you assume that the piece of property that

1 you have just described, the 100 foot piece, whatever
2 it was --

3 JUDGE MILLER: 1.3 acres.

4 THE WITNESS: No, that's her total property.

5 BY MS. LAWLESS:

6 Q I am talking about the specific spot that
7 you had said you agreed upon with Ms. Utter. Did you
8 determine if that space -- Or did you have any basis to
9 know that that space would be sufficiently large for the
10 tower that you were to build?

11 A. She and Tim were engaged in that part of the
12 discussion. I mean I wouldn't have any basis for knowing,
13 but Tim did.

14 Q So you had assumed that he had reached an
15 agreement with her about that?

16 A. No. No. He just talked about what space
17 would be needed. No, we agreed that she would be willing
18 to lease space to me if I were awarded the station. We
19 didn't agree on how much space a tower would take. We
20 didn't have that discussion.

21 Q You said that you have paid expenses and
22 then you seek reimbursement from Mr. Murray, is that correct?

23 A. Yes.

24 Q Do you ever send him receipts or itemization
25 of expenses, or proof of the money you have laid out?

1 draw up the limited partnership agreement?

2 A. I don't remember how we came to that discus-
3 sion, or maybe he said that he would be willing to do,
4 and I said, well, go ahead, you do it.

5 Q So really it was your husband's idea to draw
6 up the limited partnership agreement?

7 A. I don't recall.

8 Q So your testimony, you really don't know
9 whose idea it was?

10 A. To do it. For him to draw it up or me to
11 tell him to do it, or whatever, no, I don't.

12 Q Is it also true that you don't know whose
13 idea it was to even have a limited partnership?

14 A. It may have been -- I don't know. My husband
15 probably wanted that, because I know he supports it
16 entirely, so Mr. Murray may have also felt the same way,
17 but I know my husband was -- That's what he wanted.

18 Q Also Mr. Brady asked you about some dealings
19 with Mr. Anderson, the engineer. How many conversations
20 did you have with Mr. Anderson in the month of August 1987?

21 A. I don't know, two or three.

22 Q Did your husband talk with Mr. Anderson?

23 A. No.

24 Q Well, let me ask you this. He did not or
25 you don't know?

1 the mountain, so the top floor, front door goes on a level
2 to the sidewalk, and then the downstairs, sides and back
3 are also sort of ground level on the other parts. She was
4 down on the lower ground level, out at the side of the
5 house.

6 Q. Okay.

7 JUDGE MILLER: Mr. Brady, any time now, okay?

8 MR. BRADY: Pardon?

9 JUDGE MILLER: Any time for our daybreak.

10 I want to ask --

11 MR. BRADY: Go ahead and ask, if you have --

12 JUDGE MILLER: I'll ask one or two questions
13 and then we'll go off the record.

14 MR. BRADY: I know where I am, so I can pick
15 up tomorrow.

16 JUDGE MILLER: Fine. Make a little asterisk
17 there.

18 You entire career has been with public broad-
19 casting?

20 THE WITNESS: Most of it. My full-time career
21 has been, yes. I worked for a number of commercial
22 stations, part-time jobs, college, summer, things of that
23 sort.

24 JUDGE MILLER: Are you dedicated public
25 broadcaster or would you go commercial?

1 THE WITNESS: I have considered that prior
2 to moving to Asheville and I am pretty strongly dedicated
3 to public radio. Public radio even as opposed to --

4 JUDGE MILLER: It would have to be a good
5 offer, in other words, or a good prospect before you would
6 abandon it?

7 THE WITNESS: Right. Right. Yes.

8 JUDGE MILLER: All right. Let's break until
9 8:30 tomorrow morning.

10 (Whereupon, at 5:30 p.m., the hearing was
11 recessed, to reconvene the following day, Friday,
12 July 7, 1989, at 8:30 a.m.)
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**Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In re Applications of)	MM Docket NO. 88-577
)	
LIBERTY PRODUCTIONS,)	File BPH-870831MI
A LIMITED PARTNERSHIP)	
)	
WILLSYR COMMUNICATIONS)	File BPH-870831MJ
LIMITED PARTNERSHIP)	
)	
BILTMORE FOREST)	File BPH-870831MK
BROADCASTING FM, INC.)	
)	
SKYLAND BROADCASTING)	File BPH-870831ML
COMPANY)	
)	
ORION COMMUNICATIONS)	File BPH-870831ME
LIMITED)	
)	
For A Construction Permit For A)	
New FM Broadcast Station On)	
Channel 243A At Biltmore Forest)	
North Carolina)	

To: The Commission

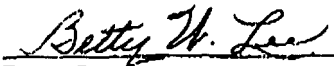
**DECLARATION OF BETTY LEE IN SUPPORT OF ORION
COMMUNICATIONS, LTD.'S MOTION FOR STAY PENDENTE LITE**

1. I am a principal and Chief Executive Officer of Orion Communications, Ltd.
2. Orion is a family-owned business now operated by myself and my sons, Barry Lee and Brian Lee. We have sought to obtain the Biltmore Forest, N.C.-FM frequency since 1986. We currently are the interim operator, in accordance with a decision of the United States Court of Appeals for the District of Columbia Circuit. We have steadfastly refused offers to "flip" the station or be bought out for large sums of money. We also have declined offers from third parties to lend Orion huge amounts of money in return for a controlling interest in Orion. We have jointly discussed on innumerable occasions our business strategy and concept. Not once have we wavered in our desire to own and control a family business. My late husband, Zebulon Lee made clear that Orion was to be a family legacy. *and a service to our community.*

3. Orion participated in the FCC's closed auction of the frequency that began on September 28, 1999. Orion ^{has} now been supplanted under the Commission's May 25th Order, and will be ordered from the airwaves, once Liberty Production LP ("Liberty") is prepared to go on the air. Thus Orion's business and goodwill will be destroyed without an opportunity for judicial review. In June, 1997, we were forced off the air by the FCC, which replaced us with the so-called Biltmore Forest Consortium. We did not regain our temporary operating authority until mid-January, 1998. We lost incalculable advertising revenues and market share during that period and still have not recovered from it. If we are removed again pending full review, this is certain to recur and will destroy our business. We would not be able to recover our employees - the last time this occurred several of our long-time staff left and we could not retain them when we got back on the air. Advertisers left and would not renew after we came back on the air.
4. Our injury is exacerbated because Liberty should not have been permitted to bid in the auction. Liberty did not execute the Applicant Identity and Ownership Information certification and its bid should not have been accepted.
5. I ask the Commission to agree to stay its order pending judicial review, which we will take within the next ten days to the United States Court of Appeals for the District of Columbia Circuit. There would be no harm to the public interest in awaiting the Court of Appeals' resolution of this case through the pending appeal process.

I have read the foregoing and declare under penalty of perjury that it is true to the best of my knowledge.

Executed at Asheville, N.C. this 2-day of June 2001.


Betty Lee